

TOWN OF KITTERY, MAINE  
PLANNING BOARD MEETING  
Council Chambers

APPROVED  
April 24, 2014

Meeting called to order at 6:03 p.m.

Board Members Present: Tom Emerson, Karen Kalmar, Deborah Driscoll Davis Davis, Susan Tuveson, Mark Alesse, Bob Melanson

Members absent: Ann Grinnell

Staff: Gerald R. Mylroie, AICP, Town Planner

Pledge of Allegiance

Minutes:

Ms. Kalmar moved to continue the minutes of April 10, 2014 to the next meeting

Ms. Driscoll Davis seconded

Motion carried unanimously by all members present

Public Comment: There was no public comment.

Public Hearing:

ITEM 1 – Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings in the Shoreland Overlay Zones in Title 16 Land Use Development Code. Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Amendment includes changes to the town's Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

Earldean Wells, Conservation Commission, questioned why the language "through no fault or action by the owner" is proposed to be stricken from Title 16.7.3.5.6.D, referencing properties should not be neglected or left in disrepair and then allowed to be torn down. Title 16.8.28.1.B *The lot on which the structure is proposed is undeveloped as was established and recorded in the York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones* should include a date, rather than the existing phrase.

There was no further testimony. The public hearing closed at 6:12 p.m.

Board members discussed the issue of neglect and reconstruction pertaining to this section and recent issues in town.

Ms. Tuveson asked about the inclusion of mobile homes in the definition of dwelling unit in the Shoreland and Resource Protection Overlay Zones. Mr. Mylroie stated this is a definition provided by the DEP as part of the 2010 conditional approval. Discussion followed noting there is a conflict with the town's definition of dwelling unit (does not include a trailer). Ms. Kalmar noted there is a difference in the code's definitions of mobile home and trailer. Discussion followed regarding recreational vehicles as dwelling/residential units and policing of recreational vehicles used as dwelling units. Mr. Emerson asked for clarification of the DEP definition of dwelling unit in the shoreland zone and the state mandate for changes; change 'residential' to 'dwelling' in definition; inclusion of a date in section 16.8.28.1.B, miscellaneous formatting edits, retain strike-through in 16.7.3.5.6.D. and return to the Board with changes prior to recommendation to Council.

## OLD BUSINESS

ITEM 2 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: review amendment and make recommendation to joint workshop with Town Council. An amendment to the Town Code to address the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations and associated definitions, Title 16.2.2.

Ms. Kalmar stated the amendment is ready to go to workshop with Council, and believes it should be included with the septic/sewer and soils code amendments. The enactment language has some errors that need to be corrected prior to final Council submittal. The Thron-Arris amendment is also ready for workshop discussion.

ITEM 3 – Estes Bulk Propane Storage/U.S. Route 1 –Preliminary Site Plan Review

Action: review and approve findings of fact. Owner M&T Realty, Applicant Estes Oil & Propane Company, propose a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route 1, Tax Map 67, Lot 4, Mixed Use, Residential Rural and Shoreland and Resource Protection Overlay zones. Agent is Edward Brake, ATTAR Engineering.

Mr. Emerson asked for a motion to reconsider to incorporate the Findings.

Ms. Kalmar moved to reconsider the motion to approve the special exception use for Estes bulk propane storage facility U.S. Route 1 project after further articulating and finalizing the Findings of Fact related to the criteria for granting a special exception land use per Town Code Section 16.10.8.3.4.T.

Mr. Alesse seconded

Motion carried unanimously by all members present

Ms. Kalmar stated she reviewed the definition for Heavy Industry and special exception use, and prepared a list of facts for Board consideration and discussion.

1. Maine's title 30-A §4404 Review Criteria states that "the municipal reviewing authority may interpret ordinances and plans"
2. (The 16.3.2.13.A Purpose of the Mixed Use zone is "to provide opportunities for a mix of office, service and limited residential and retail uses..."
3. The proposed use is a heavy industry by 16.2.2 definition, as it is "a use engaged in storage of... flammable or explosive materials" and it is also "storage that potentially involve(s) hazardous conditions".
4. Among the 49 permitted and special exception uses listed for the Mixed Use zone there are no heavy industries. And because,
5. The special exception uses for the Mixed Use zone include "light industry" and "storage" but do not include "heavy industry".

## CONCLUSION:

The Mixed-Use special exception list does not include heavy industrial storage such as the storage of 60,000 gallons of flammable, explosive material.

Mr. Mylroie explained staff considered the use as Warehousing and storage, 'where goods or materials are stored in an enclosed structure or in specific outdoor areas'. The definition for Heavy industry is 'a facility and/or site used in the basic processing and manufacturing of materials or products predominately from extracted or raw materials...' and Light industry is a 'facility used in the manufacture, predominantly from previously prepared materials, of finished products or parts including processing, fabrication, assembly...' The proposal does not include processing or manufacturing, only storage.

Ms. Kalmar noted the definition of Heavy industry also includes, '... a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions'. Heavy industry is not a special exception use in this zone. Mr. Alesse concurred.

Mr. Mylroie stated since this is not a permitted or special exception use, the Findings regarding special exception use are moot.

Mr. Melanson stated it is regrettable the applicant has had this project before the Board for over a year and a half only to now be told the Board may consider the use is not permitted in the zone and should have never come before the Board. The Board has an obligation and responsibility to do a better job.

Ms. Kalmar concurred, noting Board concerns should be conveyed at sketch plan for special exception use requests, and apologized.

Ms. Tuveson stated the project was heard based on the special exception use of Warehousing and storage, not Heavy industrial, and the findings and previous decision were based on that review.

Mr. Emerson stated the Board accepted the plan as a special exception and it was denied on that basis. The Board needs to move forward with the findings.

Ms. Kalmar noted since the motion to re-consider was moved, the heavy industry definition could be included in the findings.

Discussion followed regarding developing a findings to include the definition of heavy industry; what constitutes the record of a project and what is included in the findings; the need for factual, not anecdotal, information in developing findings.

#### Findings of Fact:

Whereas, Owner M & T Realty, LLC, and Applicant Estes Oil & Propane Company plan to construct a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One, located on Tax Map 67, Lot 4, within the Mixed Use Zone, with a portion in the Residential Rural and Shoreland and Resource Protection Overlay zones, Hereinafter the "Site", and Pursuant to the Plan Review meetings conducted by the Planning Board as noted below; and pursuant to the Project Application, Plan and other documents, the following is considered to be a part of the approval by the Planning Board in this finding, Hereinafter the "Plan": Application and supporting documents:

1. Preliminary Plan Application and supporting information (11/7/2013,
2. Supplemental information submitted (11/20/2013, 1/22/14, and 3/19/14)
3. Preliminary Site Plan and associated plans submitted, prepared by ATTAR Engineering, Inc. (11/7/2013 REV date: 3/19/14)
4. Fire Safety Analysis report prepared by Jody Pratt Ameden Energy Consulting LLC, dated 11/26/13.

Now therefore, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings:

- 1) Planning Board meetings held include: Sketch Plan Review: 3/14/13, 5/9/13 and 4/11/13; Preliminary Plan Completeness Review: 11/7/13, 12/12/13; Preliminary Plan Review: 1/9/14 (Public Hearing), 2/20/14, and 4/10/14.
- 2) The Site is located in the Mixed Use zone. A portion of the property is also located in the Shoreland Overlay Zone and the Residential Rural Zone.
- 3) *Warehousing/storage* as defined in Title 16.2 "Warehousing and storage means premises where goods or materials are stored in an enclosed structure or in specific outdoor areas."
- 4) *Industry, Heavy* as defined in Title 16.2 *means a facility and/or site used in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or*

*explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.*

- 5). Special Exception Use is defined in Title 16.2 as "...a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific provision for such special exceptions is made in Chapter 16.3."
- 6) Permitted uses in the M-U zone (16.3.2.13.B)
  1. Agricultural uses and practices, except a piggery or the raising of poultry for commercial purposes;
  2. Art studio/gallery;
  3. Boat yard;
  4. Building materials and garden supplies;
  5. Business and professional offices;
  6. Church or institution of religion;
  7. Commercial parking lot or garage;
  8. Day care facility;
  9. Dwellings, limited to the following:
    - a. Single-family dwellings on lots of record as of April 1, 2004,
    - b. Dwelling units on the upper floors of a mixed-use building that is served by public sewerage;
  10. Funeral home;
  11. Grocery store, food store, convenience store or neighborhood grocery;
  12. Hospital;
  13. Inn;
  14. Institution of education, which is not used for residential or overnight occupancy;
  15. Mass transit station;
  16. Municipal or state building or use;
  17. Convalescent care facility, long-term nursing care facility;
  18. Institution of philanthropic, fraternal, political, or social nature, which is not used for residential or overnight occupancy;
  19. Personal services;
  20. Public open space or recreation;
  21. Restaurant;
  22. Research and development;
  23. Repair service;
  24. Retail use, a single use not to exceed fifty thousand (50,000) square feet in gross floor area;
  25. Selected commercial recreation;
  26. Theater;
  27. Timber harvesting;
  28. Veterinary hospital;
  29. Accessory buildings and uses including minor or major home occupations;
  30. Eldercare facility;
  31. Accessory dwelling units; and
  32. Specialty food and/or beverage facility.

Special Exception uses in the M-U zone (16.3.2.13.C)

1. Campground or trailer park;
  2. Commercial kennel;
  3. Commercial greenhouses;
  4. Drive-in theater;
  5. Gas service station;
  6. Housing for elderly as part of a mixed use project;
  7. Industry, light;
  8. Mechanical service;
  9. Motel or hotel;
  10. New motor vehicle sales;
  11. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
  12. Repair garage;
  13. A single retail use greater than fifty thousand (50,000) square feet in gross floor area and less than one hundred fifty thousand (150,000) square feet in gross floor area;
  14. Shop in pursuit of trades;
  15. Transportation terminal;
  16. Warehousing/storage;
  17. Wholesale business; and
  18. Construction services.
- 7) Title 16.6.4.4 Special Exception Request requires “The Planning Board will review, decide and may approve an applicant’s Special Exception Use request where the proposed project requires Planning Board review as defined in Section 16.10.3.2, or is located in a Shoreland or Resource Protection Overlay Zone.

Based upon the foregoing Findings of Fact, the Board makes the following Conclusion:

The Applicant’s proposed plan to construct two 30,000 gallon propane tanks to be used in the development of a bulk propane storage facility does not meet the definition of *Warehousing/storage*, but rather meets the definition of *Industry, Heavy*, which is not included as a Special Exception Use in the Mixed Use zone.

Now therefore the Kittery Planning Board adopts each of the foregoing Findings of Fact and Conclusions, and based thereon determines the proposed development does not meet the criteria for a permitted or special exception use within the zones, and the Kittery Planning Board hereby votes to DENY approval of the preliminary plan for the above referenced property.

Vote: 6 in favor; 0 against; 0 abstaining

Break

ITEM 4 – Board Member Items / Discussion

- A. Action List: Earledean Wells asked the Board to consider the 500-foot driveway vs. the Class II road standard. Ms. Kalmar explained the committee is working with MMA on this issue.
- B. Code Amendments for May 5<sup>th</sup> Joint Workshop with Town Council; Discussed earlier.
- C. Committee Updates:
  - Comp Plan will be completed as a final draft and shared with Town committees and departments.

- Mr. Melanson noted the utilities installed in Bellamy Lane will eliminate the dependence upon Captain and Patty's for utility services. Ms. Driscoll Davis asked about the boat launch. Mr. Melanson stated this is in mediation handled by Attorney McEachern. He also noted a new harbormaster website has been developed by Charles Denault (kitteryharbormaster.com).

D. Other.

#### ITEM 5 – Town Planner Items:

A. Town Code amendment related to Quality Improvement Overlay Zone.

B. Town Code amendment related to off-site right-of-way improvements. Amendment would allow the Board to require improvements in a ROW, as well as mitigation of off-site development impacts. He noted this need is urgent and asked the amendment be scheduled for a public hearing. Discussion followed regarding design standards (Handbook).

C. Town Code amendment related to standards for sign character and appearance. Amendment would require all signs meet design standards (Handbook) for acceptable materials and design styles.

Mr. Melanson moved to public hearing the proposed code amendments to 16.10.8.2 and 16.8.10.1.

Ms. Tuveson seconded

Ms. Kalmar asked Mr. Mylroie to revised the long sentence as proposed in 16.10.8.2.1

Ms. Driscoll Davis asked about signs left up after businesses change hands. Mr. Mylroie suggested there are other issues regarding signage the staff can address. This amendment regarding design is time-sensitive. Ms. Kalmar noted her concern about signage not reflecting individual businesses if they're all the same. Board asked that the statement "reflect Kittery's historic seacoast past" be removed from the proposed language.

Motion carried unanimously by all members present

D. Other

- a program will be offered at Rice library for business entrepreneurship (date not yet set);
- an economic development website link is available on the Town's website;
- overlay zone committee of the Board needs to be established;
- Bypass working group to reconvene re: branding;
- received a \$20,000 grant to develop a Route 1 By-Pass plan (bridge to KTP) for pedestrian, bicycle and streetscape improvements;
- Board agreed to provide the Briefing Book to aid in Council discussion, re: budget.
- Conference call scheduled for 4/25 with MDOT regarding Memorial Circle. Mr. Mylroie will provide a summary of the call.
- Council authorized application for a \$650,000 MDOT CIP Grant for signalization, sidewalk, and paving improvements at Gate 1 (intersection of Walker, Government and Wentworth Streets) and Route 103 pavement improvements in the Tenney Hill section. Town participation is 10%. Ms. Driscoll Davis asked a traffic study in the area be conducted for best use of funds if awarded.

#### NEW BUSINESS

ITEM 6 – Quality Improvement Plan for Kittery Shore and Harbors Action: review and schedule a public hearing. Town advisory committee is transmitting draft plan for Town Planning Board review, hearings and recommendation to Town Council for adoption. The QIP Plan is a specific plan that includes goals/policies and implementation strategies for improving/protecting the Town's shores and harbors. Town Planner, Gerald R. Mylroie, ACIP and consultant, Jonathan C. Edgerton, PE, Wright-Pierce will make a presentation.

Mr. Edgerton summarized the process and the plan goals and strategies for the Board, acknowledging participation by Board members Driscoll Davis and Melanson. He briefly summarized the implementation strategies for numerous areas in Kittery, including [for example] Kittery Point Village and Foreside, Rice Avenue, Forts McClary and Foster, beaches, Wood Island, and Spinney, Spruce and Chauncey Creek; policy-related enhancements, such as public access, clean beaches, clam flats and aquaculture, mitigation of shoreline erosion and water pollution.

Mr. Melanson thanked Peter Walsh, DPW, Mr. Edgerton and the Shore and Harbor Committee for their efforts in developing this report. Mr. Mylroie explained the next step is to conduct a public hearing.

Ms. Tuveson asked about holding tanks. Mr. Melanson explained one tank has been replaced at Pepperrell Cove, but the ordinance precludes the installation of an additional tank, though the Infrastructure Grant included it and the DEP and MDOT recommends installation.

Ms. Tuveson moved to accept the plan and schedule a public hearing

Ms. Kalmar seconded

Motion carried unanimously by all members present

A public hearing will be scheduled for May 22, 2014.

ITEM 7 –Sarah Mildred Long Bridge Plan Action: review and forward comments to Town Council / MDOT. MDOT has completed the 60% phase of the final construction plans for the SML Bridge. The plan includes the site improvements on the Kittery side of the bridge including a new signalized intersection at Bridge Street and related Route 1 By Pass and neighborhood street improvements. Town Planner, Gerald R. Mylroie, AICIP will describe the plan.

Mr. Mylroie explained the state has completed 60% of the design, provided to the Board, and summarized the proposed improvements, including landscaping and maintenance. Ms. Driscoll Davis noted the old railroad bridge running under the By-Pass should be either redeveloped or secured for safety. Mr. Melanson added that MDOT will be constructing a pier for the bridge construction that could be retained for future use. Discussion followed regarding providing sidewalks and landscaping in the bridge area leading onto Route 1. No action was taken.

Ms. Tuveson moved to adjourn

Ms. Driscoll Davis seconded

Motion carried by all members present

The Kittery Planning Board meeting of April 24, 2014 adjourned at 9:04 p.m.  
Submitted by Jan Fisk, Recorder, April 30, 2014